



*Iowa College Student Aid Commission
Memorandum*

Date: April 27, 2007

To: Iowa Financial Aid Colleagues

From: Karen Misjak
Executive Director

Subject: Student Loan Standards for Doing Business

The Iowa College Student Aid Commission (the Commission) is monitoring national events in which student loan lending practices are being evaluated by the U.S. Department of Education (USDE), Congress, various state Attorneys General, and the media. The USDE is expected to provide additional regulatory guidance on acceptable practices versus actions that constitute an inducement later this year. However, USDE regulations are not expected to be published in final form until late this fall and may be implemented as late as July 1, 2008. Meanwhile, the Commission is aware that there is increasing concern among its college and lender participants about what is acceptable conduct. For example, some outside the financial aid community are questioning the activities of financial aid professional organizations that provide opportunities for education and networking among lender, guarantor, USDE, and college financial aid personnel. To effectively administer the federal student loan programs in this state, it is important for colleges, lenders, and Commission staff to be confident about acceptable student loan business practices. Therefore, the Commission has developed a set of student loan business standards to guide colleges, lenders, and lender servicers doing business in this state—as well as the Commission's staff—during the interim period before the USDE provides additional guidance on prohibited inducements and permissible practices.

This set of standards is based upon historical guidance disseminated by the USDE regarding acceptable federal student loan lending practices. Prior guidance sources are referenced at the conclusion of this document. The Commission has adopted additional standards as guarantor policy in areas where the USDE has not widely publicized guidance.

Permissible and impermissible activities are described and examples are provided below. Please disseminate these standards to all employees within

your organization. In addition, we ask that you designate an individual within your organization, who has responsibility for policy establishment and enforcement, to respond to the Commission indicating your agreement to abide by the standards outlined in this document. You may provide your agreement via e-mail to Commission staff Carolyn Small or Natalee Girardi at myconsent@iowa.gov by close of business on Wednesday, May 16, 2007. If an organization does not respond, the Commission will consider that organization to be in disagreement with these Standards.

Permissible Activities

The USDE states that provisions of law and regulation were broadly intended to prohibit the direct or indirect offering of payment or any other kind of financial incentive by a guarantor to a college or its employees or affiliated entities or individuals, and to prohibit the direct or indirect offering of payment or any other kind of financial incentive by a lender to any entity or person to secure applicants for FFELP loans.

Federal law permits a lender or guarantor to provide services, support, or assistance to a college that is comparable to the kind of assistance that is provided by the USDE. Some activities, while they provide some financial benefit, are nevertheless permissible because the financial value of the benefit is nominal*, or the activity is not undertaken to directly secure or influence applications from prospective borrowers. Rather, the action is a permissible form of generalized marketing or advertising, an effort to educate “customers” about programs, processes, or services, or support that is provided to a college in its administration of the federal student loan and other federal student aid programs.

Until further notice, the following are **examples of permissible activities**:

- A lender declines to collect all or part of the origination fee and/or federal default fee chargeable to the borrower, or charges the borrower an interest rate that is lower than the statutory maximum.
- The Commission declines to charge all or a part of the federal default fee to the borrower.
- A lender or the Commission provides funding to a college for default prevention, career planning, early financial aid awareness, financial literacy, or outreach.

***nominal = valued at \$10 or less, per guidelines established by SF605. State employees should consult their personnel policies for additional restrictions.**

- A lender or the Commission funds a program for default prevention, career planning, early financial aid awareness, financial literacy, or outreach purposes.
- A lender or the Commission establishes a toll-free telephone number for use by colleges or others in obtaining information regarding FFELP loans.
- A lender or the Commission establishes a toll-free number for use by colleges in electronically transmitting application data to the lender or guarantor.
- On a temporary and occasional basis, a lender or the Commission donates the time of one or more of its staff to assist a college financial aid office during a peak processing period or a staffing shortage.
- A lender or the Commission sponsors a luncheon for a recognized organization of colleges or a college trade organization or association.
- A lender or the Commission provides items of nominal value* as a form of advertising and as tokens of “good will” (e.g., free pens, writing pads, sticky notes, etc.).
- A lender or the Commission pays organizational dues and/or conference fees to a college trade organization or association in which it participates for educational and networking purposes.
- A lender or the Commission offers a student scholarship that is awarded to a randomly selected college from the pool of college attendees at a financial aid association conference.
- A lender or the Commission provides items for a silent auction that accepts bids from all attendees at a financial aid association conference and the proceeds are donated to charity.
- A lender or the Commission assists colleges in ensuring that students receive required loan counseling or debt counseling, including providing materials, electronic products, or staff to participate in or conduct the counseling.
- A lender or the Commission conducts activities that inform the public or students about the availability of student aid, including providing publicity, materials, refreshments, and staff to participate in the activity.
- A lender or the Commission provides, free of charge, computer software, technical support and training that support the technological process the lender or guarantor uses in its administration of the FFELP.

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- A lender sponsors refreshments during a break, or provides a meal, that is part of the agenda for a college trade organization or association meeting, provided the refreshments or meals are offered to all who are in attendance at the meeting.
- A lender provides, free of charge, specialized training to colleges in support of their FFELP processes, either on or off campus, or through the use of technology, including providing materials, refreshments, lunch, and token items of a nominal value* (e.g., pens and writing pads, etc.).
- The Commission reimburses identified members of its advisory council(s) (i.e., task force(s)) for travel and lodging as authorized under Iowa administrative code.
- Commissioners are reimbursed for expenses associated with Commission business as authorized under Iowa administrative code.
- Consistent with the a guarantor's established role as the principal administrator of its program, the Commission provides, free of charge, training on federal student loan or other aspects of federal student aid administration and compliance to college or lender employees. This may include providing materials, refreshments, lunch, and token items of a nominal value* (e.g., pens, writing pads, etc.).
- A college selects lenders for its private and FFELP preferred lender list based on criteria that include the lender's loan servicing performance and any loan terms, conditions or benefits the lender offers that advantage students.

Impermissible Activities

FFELP Loans

Federal law and regulation prohibits a guarantor from offering, directly or indirectly, premiums, payments, or other inducements to any college, to a college employee or student, or an entity or individual affiliated with a school in order to secure FFELP applicants. Federal law and regulation further prohibits a FFELP-eligible lender from offering such inducements to any college or other party in order to secure FFELP applicants. The Commission believes these prohibitions should be expanded and understood to prohibit not only securing applicants, but also steering applicants to a lender in exchange for any financial or other kind of incentive. The USDE states that loan decisions by students may affect their lives significantly, and such decisions should be based on the merits of the loans and not on extraneous factors—and particularly not on benefits given to the colleges on which students often rely for direction in such matters. It does not matter whether the monetary benefit is offered to the college directly, or the college receives the benefit from a third party.

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It is important to note that by inference, federal law also prohibits colleges from receiving such inducements. Federal regulations further prohibit colleges from paying an inducement to a lender or other party to secure funds for a college to use in making loans, or induce a lender to make loans to or on behalf of students at a particular college. Federal law and regulations also protect a borrower's choice of FFELP lender.

Private Education Loans

USDE, Congress, and the media have also recently focused heavily on perceived inducements relating to private education loan arrangements between FFELP lenders and colleges who participate in the Title IV programs. Currently, federal regulations and USDE policy do not provide guidance on private education loan issues. However, revenue sharing arrangements between colleges and private student loan lenders who are also eligible FFELP lenders have been heavily criticized. The arrangements in question are viewed as a conflict of interest with a college's fiduciary relationship to students, who rely on a college for objective advice about loan options. Consumer protection concerns have been raised about channeling a student to a lender that may not offer the best loan terms when that student is unaware that the lender pays the college a financial incentive for steering students to that lender. Concerns are not alleviated by a college's use of such payments for institutional grant aid to students, or other institutional benefit.

Critics of revenue-sharing practices in the private student loan industry cite high levels of student debt and point out that some students receive private student loan funds before exhausting eligibility for federal student loans that have better terms and guaranteed benefits. Providing a private loan application fee payment to a college directly contradicts the standards of conduct a lender must maintain to preserve its eligibility to participate in FFELP, where such a payment is expressly prohibited and labeled an inducement. Recently, several out-of-state referral fee arrangements have been voluntarily terminated or forcibly ended by state officials, and some colleges have been required to make compensatory payments to individual students. For all of these reasons, the Commission believes that its standards must include a component that addresses certain aspects of private education loan lending.

Until further notice, the following are **examples of impermissible activities**:

- A lender (including school-as-lender) or the Commission pays a fee or provides compensation of any type and for any ostensible purpose to **any** of the following for the referral of private or federal student loan applicants:
 - Another lender
 - A college
 - A college-affiliated organization (for example, a sorority, fraternity, club)
 - An organization indirectly affiliated with a college (for example, a donor foundation or an alumni organization)

- An entity that is not affiliated with a college (for example, a professional or civic organization)
- Any individual, including a student
- A lender or the Commission provides computer hardware at below market rental or cost, regardless of whether the computers will be used by college employees or students.
- A lender or the Commission provides non-financial aid related computer software at below market cost.
- A lender or the Commission pays or reimburses college employees for admission to an entertainment or sporting event.
- A lender or the Commission pays a college employee's meal expenses in association with a meeting or training event that the lender or the Commission, as applicable, does not sponsor.
- A lender or the Commission pays a college employee's meal expenses when that meal is not part of a college trade organization or association event agenda, or pays for a "cocktail hour" for college employees at a trade organization event.
- A lender or the Commission provides a toll-free number for use by persons interested in obtaining information regarding FFELP loans or other student aid, and staffs the "hotline" with lender or Commission employees who identify themselves as college employees.
- A lender's promotional activities include providing a prospective borrower with the chance to win a prize in exchange for applying for a loan.
- A lender pays a college financial aid officer consulting fees to market the lender's products and services to students at that college, to other colleges or college students, or to prospective college students.
- A lender pays a college employee's travel and lodging expenses in association with a meeting or training event.
- The Commission pays a college employee's travel and lodging expenses that are not associated with an advisory council or task force meeting.
- During an initial or exit counseling session, a lender representative who is conducting the counseling on the college's behalf passes out loan applications containing the lender's pre-filled identification data or exclusively discusses that lender's loan programs.
- A lender provides training free of charge to college employees on federal student loan or federal student aid administration and compliance issues.

This is not consistent with the lender's established role, which primarily involves processing the loan application and the exercise of due diligence in making, disbursing, servicing, and collecting loans.

- A college pays a lender to approve a federal or private education loan for a borrower who:
 - Does not meet the criteria under which a loan would otherwise be approved under the lender's creditworthiness policy
 - Is not required to submit to a creditworthiness examination that would otherwise be required for loan approval under the lender's policy
- A college includes **any** of the following criteria for selecting lenders for its private education loan or FFELP lender lists:
 - Payments the lender has made or will make to the college
 - Equipment the lender has provided or will provide to the college at reduced or no cost
 - Reimbursement the lender has made or will make to the college for expenses
 - Goods the lender has provided or will provide to the college
- A college advises a borrower that he/she must use only the lender(s) on the college's FFELP or private education loan preferred lender list.
- A college purposefully delays processing a borrower's loan because the borrower chooses a lender that is not on the college's FFELP or private education loan preferred lender list.

For further information regarding the above, please see the following sources: Sections 428(b)(3) and 435(d)(5) of the Higher Education Act of 1965, as amended; 34 CFR 668.82(a); 34 CFR 682.200; 34 CFR 682.212; 34 CFR 682.401(e); 34 CFR 682.604(f) and (g); *Federal Register* dated August 10, 1999, pages 43429 and 43430; Dear Colleague Letter 95-L-178 dated March 1995; Dear Colleague Letter 89-L-129 dated February 1989.